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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,799	10/03/2001	Karl Andrew Garrill	PG4113US2	3583

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EXAMINER

FOSTER, JIMMY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/971,799	Applicant(s) Garrill et al.	Examiner Jimmy G. Foster	Art Unit 3728
				
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --				
Period for Reply				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>one</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.				
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 				
Status				
1) <input type="checkbox"/> Responsive to communication(s) filed on _____				
2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final.				
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.				
Disposition of Claims				
4) <input checked="" type="checkbox"/> Claim(s) <u>1-125</u> is/are pending in the application.				
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.				
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.				
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.				
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.				
8) <input checked="" type="checkbox"/> Claims <u>1-125</u> are subject to restriction and/or election requirement.				
Application Papers				
9) <input type="checkbox"/> The specification is objected to by the Examiner.				
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p>				
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. <p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p>				
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.				
Priority under 35 U.S.C. §§ 119 and 120				
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). <p style="margin-left: 20px;">a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>				
<p style="margin-left: 20px;">*See the attached detailed Office action for a list of the certified copies not received.</p>				
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). <p style="margin-left: 20px;">a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p>				
15) <input checked="" type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.				
Attachment(s)				
1) <input type="checkbox"/> Notice of References Cited (PTO-892)				
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)				
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____				
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____				
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)				
6) <input type="checkbox"/> Other: _____				

RESTRICTION REQUIREMENT

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

(a) the species in which the drug in the drug formulation is fluticasone propionate.

(b) the species in which the drug in the drug formulation is beclomethasone dipropionate.

(c) the species in which the drug in the drug formulation is salmeterol xinafoate.

(d) the species in which the drug in the drug formulation is salmeterol xinafoate and ipratropium bromide.

(e) the species in which the drug in the drug formulation is salmeterol xinafoate and fluticasone propionate.

(f) the species in which the drug in the drug formulation is salbutimol sulphate.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least the independent claims appear to be generic.

2. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An

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argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. For contacting the PTO by phone, the following contact numbers may be used:

For tracking of papers and association of papers with cases --
Customer Service 3700. . . (703)306-5648

For matters regarding examination -- Examiner:
Jim Foster (703)308-1505

For faxing of correspondence:

Draft amendments only- (703)308-7769

(Examiner should be notified of fax)

Formal correspondence- (703)305-3579 or 305-3580

For petitions:

Before the Examiner . (703)308-1505

Before the Director . (703)308-3872

Other petitions . . . (703)305-9285



JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3720

JGF
December 20, 2002